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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,866	02/20/2004	Glen S. Axelrod	TFH063	7526

7590 05/30/2007
Grossman, Tucker, Perreault & Pfleger, PLLC
55 South Commercial Street
Manchester, NH 03101

EXAMINER

SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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05/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/783,866

Applicant(s)

AXELROD, GLEN S.

Examiner

C. SAYALA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,14,15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,14,15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 4-8, 11-12 & 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al. (US Patent 6493641) in view of Marino et al. (US Patent 4418086) or Tonyes et al. (US Patent 4713250) taken with Steffe ("Rheological Methods in Food Process Engineering", Freeman Press, 1996, page 15), and further in view of Buckingham et al. (US Patent 6861086).

Singh et al. teach providing a consumer with a bag of dry food base, a bottle of customized sauce, and a custom selected spoon for measuring-scoop for measuring the sauce into food bowl and a customized measuring-scoop for the dry kibbles. The consumer measures the sauce, the kibbles and mixes the appropriate amounts for the pet. See col. 15.

At col. 13, lines 34-67, patentees show that the sauce or additive can also alternatively be a powder, a coating, a thickener, a topping or gravy or mixtures of the above. The additive is said to contain vitamins and minerals at typically less than 1% of the formulation. Patentees show that "for vitamins and minerals that need to be protected from high thermal processing such as extrusion, the vitamins and minerals

Art Unit: 1761

are added to the additives instead". The vitamins suggested: E and C. In addition, at col. 14, lines 18-26, patentees state:

Other specialized micronutrients, as they are discovered for their effect in pet nutrition can also be delivered through the additives as a delivery mechanism. For example, fish oil as a source of omega three fatty acids for healthy skin and coat, is included in the additives in the required quantities (such as between 0 and 5%). Alternatively, sodium acid pyrophosphate for dental and skeletal health is included in the additives in the required quantities (such as between 0 and 5%).

The above patent does not teach preparation of the base dry pet food with regard to the extrusion details such as temperature and shear rate. Marino and Tonyes disclose the extrusion temperatures at col. 7, lines 45-54 and col. 6, lines 10-30 respectively, while Steffe shows "typical" extrusion shear rates for pet foods at Table 1.1. To incorporate such typical conditions during manufacture of pet foods would have been obvious to one of ordinary skill in the art at the time the invention was made. Buckingham et al. teach an air-tight container that is fitted with a valve that "prevents the influx of air into the container" (col. 6, line 34). Since it is already known that nutritional additives are easily oxidized, to place nutritional additives in air tight packaging that is already in use for food products, so that no air enters it even while in use, would have been an obvious feature to select at the time the invention was made and this would have been obvious to one of ordinary skill in the art, who is packaging easily oxidizable additives.

2. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al. in view of Marino et al. (US Patent 4418086) or Tonyes et al. (US

Patent 4713250) taken with Steffe ("Rheological Methods in Food Process Engineering", Freeman Press, 1996, page 15), and Buckingham et al. (US Patent 6861086) further in view of Vita-Gravy (downloaded from <http://www.petpro-products.com>, Dec 11, 2001) or Torney et al. (US Pub 2003/0194423) and Axelrod et al. (US Patent 6586027).

The patent to Singh et al. is as described above. It does not teach the minerals claimed in instant claim 9, although the patent discloses minerals in the additive and these minerals are all well-known. The patent also does not disclose the herbs of claim 10. Vita-Gravy teaches a flavor topping that also provides nutrients to the pet food. Page 8 discloses the minerals. Torney et al. also teach a flavoring composition that supplements the nutritional content of a pet food. See paragraphs [0070] and [0085] which disclose minerals and herbs as functional ingredients, respectively. Axelrod teaches specific herbal ingredients as well as minerals, that are useful in pet food products and to incorporate these in Singh et al. would have been obvious based on their usefulness. See col. 3, lines 45-67.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al. in view of Marino et al. (US Patent 4418086) or Tonyes et al. (US Patent 4713250) taken with Steffe ("Rheological Methods in Food Process Engineering", Freeman Press, 1996, page 15), and Buckingham et al. (US Patent 6861086) and further in view of Brandt et al. (US Pub. 2004/0029974).

The patents are as discussed above. They do not teach that the packaging used for the food supply to the consumer was in a plastic container that contains UV absorbers. Brandt et al. teach that such packaging was known in the art at the time the invention was made. See page 2, paragraph [0020], and paragraph [0017], wherein the reference shows that the packaging can be used for animal feeds including for dogs, etc. For the benefit of preserving the efficacy of heat- and radiation-sensitive vitamins and mineral, the use of such packaging would have been beneficial as well as obvious.

4. Claims 15 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al. in view of Marino et al. (US Patent 4418086) or Tonyes et al. (US Patent 4713250) taken with Steffe ("Rheological Methods in Food Process Engineering", Freeman Press, 1996, page 15), and Buckingham et al. (US Patent 6861086) and further in view of Addy (US Patent 6379727).

The primary patents are as described above. They do not teach packaging the separate packages of base pet-food and the additive together, but Addy et al. teach this feature as stated below, at col. 4, lines 19-23:

The pet food variety flavor pack of this invention may include a package of pet food, such as a dog food or cat food, for example an unflavored pet food such as that prepared in accordance with Example 8.

The patent teaches packaging various flavor additives in separate packages and included with a package of pet-food. The flavor additive is included with a seasoning shaker or spray bottle and the flavor additive in a powder form, and is packaged in foil, paper, plastic etc. and sealed to prevent loss of volatile components. See col. 2 and

Art Unit: 1761

claims 1-4. It would have been obvious to package the dry pet-food package and the additive package together, just for the convenience afforded to the consumer as taught by Addy et al.

Response to Arguments

Applicant's arguments filed 3/16/2007 have been fully considered but they are not persuasive.

.All of the traversals are based on the limitations to be found in the now amended claims 1 and 15. Applicant states that Singh et al. do not disclose the air tight container and the container that dispenses without allowing any make-up air into the container. Since such features were already known in the art, as the rejection now shows then, based on the fact that nutritional additives are easily oxidized, a fact already known in the art, it would have been obvious to use containers with such features as disclosed by the applied references, that were already known in the art in the area of foods, i.e. in the same area of endeavor. The specification does not describe the packaging per se, neither are the claim sto the packaging per se, but only to use of such type of packaging with respect to a product, i.e. nutritional additives, that one skilled in the art well knows are temperature sensitive and air sensitive.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 1761

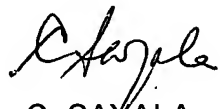
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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'C. Sayala', is positioned above the printed name.

C. SAYALA
Primary Examiner
Group 1700.